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NOV 22 2004

TRANSPORTATION BOARD

JOHN D. HEFFNER, PLLC

1920 N St., N.W.

SUITE 800

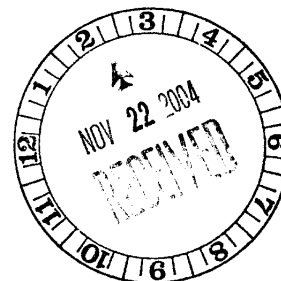
WASHINGTON, D.C. 20036

(202) 263-4180

FAX (202) 296-3939

j.heffner@verizon.net

212594
ORIGINAL



BY HAND

November 22, 2004

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

NOV 22 2004

Part of
Public Record

RE: FD No. 34618, East Penn Railway, Inc.,
Application For a Modified Certificate of
Public Convenience and Necessity

Dear Mr. Williams:

On behalf of Applicant East Penn Railway, Inc., I am filing an original and ten copies of an Application for a Modified Certificate of Public Convenience and Necessity.

I am also enclosing one check payable to the Board for \$1,300 to cover the applicable filing fees and a computer disk formatted in WordPerfect 8.0 containing these filings.

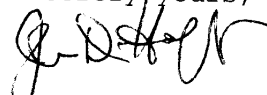
Please date stamp and return one copy of this filing for our records.

Sincerely yours,

FILED

NOV 22 2004

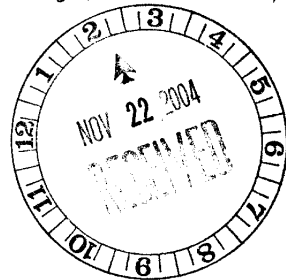
**SURFACE
TRANSPORTATION BOARD**


John D. Heffner

cc: Mr. John C. Nolan

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

STB Finance Docket No. 34618



EAST PENN RAILWAY, INC.
APPLICATION FOR A MODIFIED CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

APPLICATION FOR A MODIFIED CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

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NOV 22 2004
SURFACE
TRANSPORTATION BOARD

Respectfully submitted,

East Penn Railway

By its attorney,

John D. Heffner
John D. Heffner, PLLC
1920 N Street, NW
Suite 800
Washington, D.C. 20036
(202) 263-4180

ENTERED
Office of Proceedings
NOV 22 2004
Part of
Public Record

Dated: November 22, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

EAST PENN RAILWAY, INC.
APPLICATION FOR A MODIFIED CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

STB Finance Docket No. 34618

APPLICATION FOR A MODIFIED CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY

1. Name and address of operator

East Penn Railway, Inc.
1973 Wellington Drive
Suite One
Langhorne, PA 19047

East Penn Railway, Inc. ("East Penn") is currently a class
III rail carrier subject to the Board's jurisdiction.

(i) Articles of incorporation: Not applicable.

(ii) Names and addresses of all of its officers and
directors and a statement indicating any present affiliation
each may have with a rail carrier: Not applicable.

(iii) Sufficient information to establish the financial
responsibility of the operator: Not applicable.

2. Information about the prior abandonment, including docket number, status and date of the first decision approving the abandonment:

East Penn proposes to operate a portion of a rail line known as the Octoraro Branch (also referred to as U.S.R.A. Line 142), extending for approximately 27.51 miles between milepost 26.98 at Chadds Ford Jct., PA, and milepost 54.49 at the Pennsylvania/Maryland state line near Sylmar, MD.

The Octoraro Branch was previously owned by the Penn Central Transportation Company (Penn Central), and is currently owned by the Southeastern Pennsylvania Transportation Authority (SEPTA), a political subdivision of the Commonwealth of Pennsylvania that provides passenger rail service. The Octoraro Branch was not included in U.S. Railway Association's *Final System Plan* at the time the Consolidated Rail Corporation was formed and, as such, was authorized to be abandoned without further regulatory approval pursuant to the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210. SEPTA acquired the Octoraro Branch from the trustees of Penn Central after it was abandoned in 1976.

From 1979 to the present, a series of short line railroad operators have successfully provided service over the line. These operators have included Octoraro Railway (1979 to 1994),

the Delaware Valley Railway Company (1994 to 1999), Brandywine Valley Railroad Company (1997 to 2002), Brandywine Valley Railroad Company LLC (2002 to 2003) and the Morristown & Erie Railway, Inc. (M&E) (2003 to the present). M&E operates under an interim license, and by this Application for a Modified Certificate, East Penn proposes to replace M&E as the interim operator.¹

3. The exact dates of the period of operation which have been agreed upon by the operator and the State which owns the line (if there is any agreement, it should be provided):

East Penn plans to operate pursuant to this Application for Modified Certificate from November 22, 2004 through approximately December 19, 2004, when Applicant will purchase the Octoraro Branch from SEPTA. A copy of the Interim License authorizing East Penn to provide freight service over the line is attached as Exhibit A.

4. A description of the service to be performed:

East Penn will operate over the line on an as needed basis, with frequency to increase as it is able to attract customers and traffic.

¹ Later this year, East Penn plans to purchase the Octoraro Railway from SEPTA.

(i) The line over which service is to be performed:

East Penn proposes to operate a portion of a rail line known as the Octoraro Branch, extending for approximately 27.51 miles between milepost 26.98 at Chadds Ford Jct., PA, and milepost 54.49 at the Pennsylvania/Maryland state line near Sylmar, MD.

(ii) All interline connections including the names of the connecting railroads:

The Octoraro Branch will connect with ISG Railways, Inc. ("ISG")² at Chadds Ford Junction, PA, in order to connect with Norfolk Southern Railway Company (NS) at Coatesville, PA. ISG's rail line also connects with the former Reading Railroad's Wilmington & Northern line at the Delaware/Pennsylvania state line providing East Penn with access to both NS and CSX Transportation Corp. at Wilmington, DE.

(iii) The nature and extent of all liability insurance coverage, including binder or policy number and name of insurer:

Information pertaining to liability coverage is attached as Exhibit B.

² ISG Railways, Inc., acquired the assets of Brandywine Valley Railroad Company LLC.

(iv) Any preconditions which shippers must meet to receive service: None.

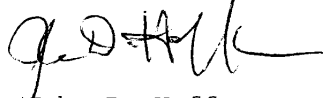
5. The name and address of any subsidizers: Not applicable.

6. Sufficient information to establish the financial responsibility of any subsidizers: Not applicable.

Respectfully submitted,

East Penn Railway

By its attorney,



John D. Heffner

John D. Heffner, PLLC

1920 N Street, NW

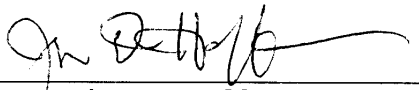
Washington, D.C. 20036

(202) 263-4180

Dated: November 22, 2004

CERTIFICATE OF SERVICE

I, John D. Heffner, hereby certify this 22nd day of November, 2004, that a copy of the foregoing Application for a Modified Certificate of Public Convenience and Necessity was sent, postage prepaid, by first class mail to the State of Pennsylvania Department of Transportation and all persons who have used the line within the 6 months preceding the date of this notice.



John D. Heffner

EXHIBIT A

INTERIM LICENSE AGREEMENT



Southeastern Pennsylvania Transportation Authority

Legal Division

1234 Market Street, 5th Floor
Philadelphia, PA 19107-3780

(215) 580-7993

(215) 580-7078 (Fax)

Direct Dial Number:
(215) 580-7450

Wednesday, November 17, 2004

John D. Heffner, Esquire
Suite 800
1920 N Street, N.W.
Washington, DC 20036

Re: Interim Operation of Line 142

SEPTA Legal Division File No. 2551

Dear Mr. Heffner:

I write to you as the attorney for East Penn Railway, Inc. ("East Penn").

Background

On June 20, 2003 SEPTA issued to Morristown & Erie Railway, Inc. ("M&E") an interim license under which SEPTA authorized M&E to operate railroad freight service between Chadds Ford Junction (Mile Post 26.98) and Mile Post 54.49 ("Right-Of-Way"). On November 15, 2004 SEPTA gave notice to M&E that the interim license will terminate at 12:01 a.m., Friday, November 19, 2004.

SEPTA's Procurement and Contracts Department has found that East Penn was the highest responsive and responsible bidder for Sealed Bid No. 08274 (sale of part of the Octoraro Branch). On November 11, 2004, the Operations Committee of the Board of SEPTA placed on the consent calendar for consideration by the Board a recommendation that the Board authorize the General Manager to execute the proposed agreement of sale by which SEPTA will transfer ownership of the Property (defined in the proposed agreement of sale) by quitclaim deed to East Penn for a selling price of \$353,720.00. The Board will consider the proposal at its meeting scheduled to take place beginning at 3:00 p.m., Thursday, November 18, 2004.

Interim License

By signing this letter on the appropriate line, East Penn agrees to the following terms of the interim license:

1. SEPTA hereby grants to East Penn, beginning at 12:01 a.m. on Friday, November 19, 2004, the exclusive interim license to operate railroad freight service on the Right-Of-Way until such time as SEPTA transfers ownership of the Property to East Penn. At the transfer of ownership to East Penn, the interim license perforce becomes a nullity.

John D. Heffner, Esquire
Wednesday, November 17, 2004
Page 2

2. For the duration of the interim license East Penn will obtain and keep in force the insurance that Michael Warren, SEPTA's Director of Enterprise Risk Management, requires.
3. For the duration of the interim license, East Penn and Brandywine Valley Railroad Company will have in place an agreement under which the railroads will exchange cars.
4. East Penn will immediately commence repairs to the Right-Of-Way that the storm of September 29, 2004 caused so that East Penn may expeditiously restore railroad freight traffic on the Right-Of-Way.
5. SEPTA will pay \$55,000.00 to East Penn on the day SEPTA transfers ownership of the Property to East Penn as full consideration to East Penn for the repairs to the Right-Of-Way that the storm of September 29, 2004 caused.
6. For the duration of the interim license East Penn will maintain the Right-Of-Way to ensure the safe operation of the railroad.
7. East Penn will comply with all laws, statutes, and regulations.
8. East Penn will immediately notify SEPTA in the event of an accident (property damage and/or personal injury), derailment, or hazard on the Right-Of-Way.
9. All notifications by East Penn to SEPTA will be made to:
Jeffrey D. Knueppel, P.E.
Chief Engineer of SEPTA
1234 Market Street, 14th Floor
Philadelphia, PA 19107-3780
Office: (215) 580-8280
10. All notification by SEPTA to East Penn will be made to:
John C. Nolan, President
East Penn Railway, Inc.
1973 Wellington Drive, Suite One
Langhorne, PA 19047
Office: (215) 757-4002
Facsimile Machine: (215) 757-6996
Mobil Telephone: (215) 317-8875

John D. Heffner, Esquire
Wednesday, November 17, 2004
Page 3

11. For the duration of the interim license, East Penn may occupy the station building or freight house in Avondale for use as an office so long as East Penn notifies SEPTA at least five days before its intention to do so.
12. Before East Penn allows a contractor, construction company, or other entity to perform any work that requires the contractor, construction company, or other entity to enter or occupy part or all of the Right-Of-Way, East Penn must give SEPTA at least five days' notice (except in an emergency) so that SEPTA may impose reasonable restrictions and insurance requirements on the contractor, construction company, or other entity before the work commences.
13. SEPTA may terminate the interim license for any violation of the terms herein.

Sincerely,



Nicholas J. Staffieri
General Counsel

NJS/meg

Accepted on behalf of East Penn Railway, Inc.

John C. Nolan
President

Date: November 18, 2004

EXHIBIT B

EVIDENCE OF INSURANCE

11/20/2004 00:37 2157576996
11/19/2004 11:22 8142751948

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MORAIL

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PAGE 02

Policy Number: ECC 9023562-00

Date Entered: 11/19/2004

ACORD CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 11/19/2004
PRODUCER MCCARTHY RAIL INSURANCE AGENTS, INC. 216 Penn Street P.O. Box 243 New Bethlehem, PA 16242-0243 (814) 275-4999	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED EAST RIVER RAILWAY, INC., ETAL JOHN C. MCGRAW 1973 Wellington Drive Suite 1 Langhorne, PA 19047	INSURERS AFFORDING COVERAGE INSURER A: PENNSYLVANIA INSURANCE COMPANY INSURER B: INSURER C: INSURER D: INSURER E:	NAIC #

COVERAGES					
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.					
TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	LIMITS	
GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> RR LIABILITY <input type="checkbox"/> CIVIL AGGREGATE LIMIT APPLIES FOR: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO LIMIT <input type="checkbox"/> LOSS	ECC 9023562-00	1/1/2004	1/1/2005	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (EA accident)	\$ 5,000,000
				MED EXP (any one person)	\$
				PERSONAL & ADV INJURY	\$ 5,000,000
				GENERAL AGGREGATE	\$ 10,000,000
				PRODUCTS - COMMON AGG	\$ 5,000,000
AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> RENTED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (EA accident)	\$
				BODILY INJURY (Per person)	\$
				BODILY INJURY (Per accident)	\$
				PROPERTY DAMAGE (Per accident)	\$
GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
				OTHER THAN EA ACC	\$
				AUTO ONLY	\$
EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE	\$
				AGGREGATE	\$
					\$
					\$
					\$
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/EMPLOYEE INCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER				WC STAT - 100% TORT LIMIT \$	
				E.L. EACH ACCIDENT	\$
				E.L. DISEASE - EA EMPLOYEE	\$
				E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / SPECIAL PROVISIONS BY ENDORSEMENT / SPECIAL PROVISIONS
SEE NAMED INSURED LIST ATTACHED

CERTIFICATE HOLDER	CANCELLATION
SOUTHEASTERN PA TRANSPORTATION AUTHORITY 1234 MARKET STREET, ONE FLOOR PHILADELPHIA, PA 19107-3700 ATTN: NICHOLAS STAFFIERI, GENERAL COUNSEL	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL endeavor to MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE: Robert D. McCarthy MCCARTHY, LLC

.11/20/2004 00:37 2157576996
11/19/2004 11:22 8142751948

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MORAIL

PAGE 03
PAGE 03

NAMED INSUREDS

East Penn Railways, Inc.

Penn Eastern Rail Lines, Inc.

Transrail, Inc.

East Penn Rail Excursions

John C. Nolan

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